IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1410 OF 2005
IN
WRIT PETITION NO.7817 OF 2004

Radhakanta G. Sarangi ...Applicant
Vs.
Manjra Charitable Trust & Ors. ...Respondents

Mr. S.D. Thokade Adv. for Applicant
Mr. A.L. Gore Adv. for Respondent No.2

CORAM: F.I.REBELLO & ROSHAN DALVI, JJ.
DATED: 25TH NOVEMBER , 2005

P.C.

1. On behalf of the Respondent reply has been filed today. Learned Counsel seeks time to file rejoinder. Application for adjournment rejected for the order to be passed.

2. The present application by the applicant is for recalling the order dated 29th April, 2005. That Petition was disposed of on the statement made that a candidate had already been selected.

3. The Petitioner had not been regularly selected. His services were terminated. He had preferred an appeal. The appeal against termination has been dismissed. Considering that the relief as prayed for in the Petition could not have been granted

and as such there is no question to recall the order dated 29th April, 2005. Hence that prayer clause cannot be granted.

4. The second relief is to initiate appropriate action against Respondent No.2 R.B. Kulkarni for intentionally making false statement on oath before this Court.

5. In the instant case by order dated 15th April, 2005 Petitioner was directed to serve notice on Respondents 1 to 3 on the limited point as to whether any candidate had been selected. An affidavit was filed before this Court which was taken on record on 29th April 2005. That affidavit however, as is now pointed out was sworn on 2nd December 2004. In the reply now filed it is apparent that one Mr. P.M. Aphale was selected by Selection Committee and issued letter by appointment dated 16th June 2005. It appears that till the date of the affidavit the said Aphale had not joined. It is thus clear that Dr. Ramesh Kulkarni, when he filed the affidavit on 29th April 2005, did not disclose this fact to the Court. From the affidavit filed today it is further clear that subsequent to the order of this Court the Selection Committed met on 1st July, 2005 and has selected one Suryakant A. Nagari from DTLT category who has joined the post. In these circumstances we have to consider whether the relief in terms of prayer

clause (b) should be considered.

6. Petitioner had no right to the post. There is on the part of the 2nd Respondent's omission to point out the fact that Aphale had not joined. The order of the Court had directed to furnish information whether a candidate was selected. In our opinion because of this omission which may amount to misrepresentation, it cannot be said that the relief in terms of prayer clause ought to be granted. The fact remains that the Petitioner was selected on temporary basis and the services came to be terminated. The order of termination was challenged in appeal and the College Tribunal did not find any merits to interfere with the order of termination. For the aforesaid reasons we are not inclined, on the facts as they stand, to consider the grant of the relief as prayed for. On behalf of Dr. Kulkarni learned Counsel makes a statement that Dr. Kulkarni is tendering his apology for not having disclosed the true and correct facts in sofaras the nonjoinder of Mr. Aphale on the post. We accept the same.

5. Considering the above we find no merit in this application, which is accordingly rejected.

(F.I.REBELLO J.)

(ROSHAN DALVI, J.)